

167 23.12.2019
Rkd Ct. No.28
/PA

C.R.M. 12209 of 2019

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure.

And

In the matter of: Aijul Gharami

....petitioner.

Mr. R. Das

...for the petitioner.

Ms. Z. N. Khan,
Ms. T. Mitra

...for the State.

We are informed that due to lawyers' strike police personnel were unable to enter the court premises and produce the original case diary before us. Report to that effect is placed before us.

In **Harish Uppal (Ex-Capt.) vs. Union of India, (2003)2 SCC 45**, a Constitution Bench of the Apex Court held that lawyers have no right to go on strike or call for bandh or even a token strike. Only in rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake and a protest abstention from work not more than a day may be entertained and to do so, the President of the Bar must consult and seeks permission from the Chief Justice or the District Judge in the matter. The Bench further held as follows:-

“...It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be addition to damages which he might have to pay his client for loss suffered by him.”

In *Hussain and Another vs. Union of India*, (2017) 5 SCC 702, the Apex Court recognized that frequent strikes, abstention from work by lawyers or frequent suspension of court work after condolence references is one of the prime reason for delay in disposal of criminal cases. The Court held as follows:-

“27. One other aspect pointed out is the obstruction of Court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of judgment of this Court in Harish Uppal versus Union of India, such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realizes its duty to the society which is the foremost. Condolence references can be once in a while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on undertrials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps. In any case, this needs attention of all authorities concerned – the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect strictly and take stringent measures as may be required in the interests of administration of justice. (emphasis supplied)”

In *Krishnakant Tamrakar Vs. State of M.P.*, (2018) 17 SCC 27, the Court reiterated that every resolution to strike and abstain from work is per se contempt and necessary mechanism to enforce the mandate of the Court needs to be put in place till proper legislation to remedy the situation is enacted. The Court observed as follows:-

50. Accordingly, we consider it necessary, with a view to enforce fundamental right of speedy access to justice under Articles 14 and 21 and law laid by this Court, to direct the Ministry of Law and Justice to present at least a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can

thereafter be considered in its contempt or inherent jurisdiction of this Court. The Court may, having regard to the fact situation, hold that the office-bearers of the Bar Association/Bar Council who passed the resolution for strike or abstaining from work, are liable to be restrained from appearing before any court for a specified period or until such time as they purge themselves of contempt to the satisfaction of the Chief Justice of the High Court concerned based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office-bearers of the Bar Association forthwith until the Chief Justice of the High Court concerned so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice.

In the present case the striking lawyers have not only brought the administration of justice to a standstill but have also in a flagrant manner obstructed the police personnel from discharging their official duties which amount to cognizable offence in law.

Superintendent of Police, Paschim Medinipur is directed to enquire into the matter and take necessary steps so that police personnel, litigants, lawyers and all stake holders in the administration of justice are permitted to enter into the court premises and discharge their duties and/or activities in accordance with law. Any obstruction to judges, police personnel or other public servants in that regard would amount to cognizable offence and prompt steps shall be taken against the offenders.

Superintendent of Police shall submit report before this Court on the next date of hearing.

Let this matter appear on 8th January, 2020.

Department is directed to communicate this order to the District and Sessions Judge, Paschim Medinipur as well as the

Superintendent of Police, Paschim Medinipur for intimation and prompt compliance.

Let photostat plain copy of this order duly countersigned by Assistant Registrar (Court) be handed over to the parties on usual undertaking.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)

Bar and
Bench

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